

EXPENSES OF SURVEYS IN CONDEMNATION PROCEEDINGS.

Neither the appropriation made in the act of April 27, 1904, for the purchase of a site for a naval station on the New England coast, nor the appropriation for contingent expenses of the Navy is applicable to the expense of making surveys of said site in connection with condemnation proceedings, but said expenses are payable from the appropriation for the Department of Justice.

(Comptroller Tracewell to the Secretary of the Navy, November 18, 1905.)

By your reference of November 10, 1905, I have received the following letter addressed to you by the Attorney-General under date of August 14, 1905:

"The Department has received a letter from United States Attorney Adams, of Boston, Mass., in regard to the condemnation of land at Hingham and Weymouth as a site for a naval magazine.

"The district attorney desires to employ Aspinwall & Lincoln to take 'check levels' and make computations as to certain gravel deposits on said land, and furnish a plan on tracing cloth showing the levels of the whole area belonging to the town of Hingham, giving careful computations of the quantity of gravel or other valuable materials they find, at a compensation of \$500. He states that it is necessary to have the work done, and the amount specified is reasonable.

"Will you kindly have this work done through the Bureau of Yards and Docks, if practicable, and advise this Department of your action?"

You request my decision as to whether the firm of Aspinwall & Lincoln may be employed by your Department to make the surveys mentioned in the letter *supra*, and be compensated therefor from the appropriation contained in the act of April 27, 1904 (33 Stat., 338), for the purchase of a site for a naval magazine on the New England coast; or, if not, whether any other appropriation under the control of your Department is available for the purposes stated.

The act of April 27, 1904, making appropriations for the naval service for the fiscal year ending June 30, 1903 (33 Stat., 338), contained the following provision:

"*Naval Magazine, New England*: For the purchase of land for a naval magazine on or near the New England coast,

north of Cape Cod, and toward the erection thereon of the necessary buildings, of inclosing said grounds, of grading and filling in * * * seventy thousand dollars, or as much thereof as may be necessary; and the Secretary of the Navy may employ, and pay out of the appropriation hereby authorized, such additional expert aids, surveyors, architects, superintendents of construction, or draftsmen as may be necessary for the preparation of the plans and specifications and prosecution of the work authorized, to an amount not to exceed fifteen thousand dollars." * * *

The same act (33 Stat., 325) also contains the following provision:

"*Contingent, Navy*: For all emergencies and extraordinary expenses, exclusive of personal services in the Navy Department or any of its subordinate bureaus or the offices at Washington, District of Columbia, arising at home or abroad, but impossible to be anticipated or classified, to be expended on the approval and authority of the Secretary of the Navy, and for such purposes as he may deem proper, sixty-five thousand dollars." * * *

These two appropriations are the only ones which need be at all considered in connection with the questions you present in this case.

While it is true that the act of April 27, 1904, authorizes the Secretary of the Navy to acquire, by condemnation proceedings if necessary, the land for the site of such naval magazine, said act does not contain any authority for the use of any part of the appropriation for such site otherwise than for the purchase of the land, equipment of the buildings, and so forth. The surveys which are mentioned in the letter quoted *supra* are essentially a part of the proceedings for condemnation, and as such are payable from an appropriation for the Department of Justice and not from the appropriation for the purchase of the site. (See 10 Comp. Dec., 538; 9 Comp. Dec., 793; 3 Comp. Dec., 217.)

Nor do I think the contingent appropriation, quoted *supra*, available for the purpose here involved. The surveys desired in the condemnation proceedings herein are not in any sense such an "emergency or extraordinary expense, impossible to be anticipated or classified," within the meaning of the said act. On the contrary; the possible necessity for such condemnation proceedings is recognized by Congress in the act appropriating money for the purchase of the site.

Said act expressly authorizes the Secretary of the Navy to institute condemnation proceedings if necessary, but no authority is given therein for the use of any part of said appropriation in payment of expenses connected with such condemnation proceedings.

I have therefore to advise you that neither of the appropriations which I have above quoted are properly available for the payment of the proposed surveys.

PERMANENT INDEFINITE APPROPRIATION.

The appropriation made in the act of April 27, 1904, for the construction of a sewer for the drainage of Magnolia avenue, Takoma Park, D. C., said sewer to be connected with the sewer system of Takoma Park, Md., upon agreement with the proper authorities of that town, is a permanent indefinite appropriation and available until completion of the object for which it was made.

(Comptroller Tracewell to the Commissioners of the District of Columbia, November 18, 1905.)

In your communication of November 10, 1905, you request my decision of a question which you therein present, as follows:

"The Commissioners of the District of Columbia have the honor to invite your attention to the following item contained in the District appropriation act for the fiscal year 1905, approved April 27, 1904, under audit head of 'Sewers':

"For constructing and maintaining the necessary outlet sewer for the drainage of Magnolia avenue, Takoma Park, District of Columbia, said sewer to be connected with the sewer system of Takoma Park, Maryland, upon agreement with the proper authorities of that town, one hundred and fifty dollars."

"The Commissioners are informed that under the provisions of section 3690 of the Revised Statutes of the United States this appropriation is carried as an annual appropriation and not as a permanent or indefinite appropriation. They have the honor to request that the appropriation be regarded as a permanent or indefinite appropriation for the reason stated below.

"The object of the construction proposed by this item is to furnish sewer facilities to a small section of Takoma Park,

D. C., which, on account of the lay of the ground, can not be drained into the sewer system of the District of Columbia. In order that the houses in this section, ten in number, might have sewer facilities which could only be provided by draining them into a sewer system of Takoma Park, Md., lying just adjacent to Takoma Park, D. C., the Commissioners requested Congress to make an appropriation for this purpose. The appropriation was made as quoted above. Shortly after the appropriation became available the Commissioners entered into correspondence with the mayor of Takoma Park, Md., submitting a form of agreement for the approval of the authorities of Takoma Park, Md., for a connection with their sewer system. Considerable correspondence regarding the matter has been had, but no agreement has, to date, been reached. The Commissioners understand, however, that there is a probability of such an agreement being reached in a short time, and they desire at that time to enter into contract for the construction of the sewer under the appropriation of \$150.

"The Commissioners submit that in view of the fact that the appropriation above cited is dependent entirely upon an agreement to be made with the authorities of the town of Takoma Park, Md., it was clearly the intention of Congress that the appropriation should not be expended until the agreement had been entered into; and that when the agreement had been executed the appropriation should be available for carrying out the work. The appropriation by its terms indicates it was intended to be continuous and available until the work thereunder had been completed, and it is therefore requested that this appropriation be regarded as a permanent appropriation."

The appropriation referred to having provided for a sewer "to be connected with the sewer system of Tacoma Park, Md., upon agreement with the proper authorities of that town," it could not become available until such an agreement had been made. Congress must therefore have contemplated that an indefinite period might be consumed in negotiations for such agreement and not have intended the appropriation for the expenses of one fiscal year only, but intended that the appropriation should thereafter be available for the construction of the sewer.

I am therefore of opinion that the appropriation is now available for the construction of the sewer, and that it must be regarded as continuing available until the completion thereof.